Notice – Deadline for written comments is January 29th, 2009. It is preferable that the comments be submitted electronically to Fran Kammerer at fkammerer@oehha.ca.gov. If this is not possible, please submit paper copies to:

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1001 I Street
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| 1. MFG/Distributor still liable if retailer does not participate in the program | • We plan to introduce the new regulation as a “pilot program” that will sunset in 4-5 years. This will allow us to make some basic assumptions about the level of participation and coverage of the program, and then test them out over the “pilot” period.  
• As part of the pilot we will include a full “safe harbor” for all participating manufacturers and retailers to encourage full participation in the program. |
| 2. Binder Option needs to be available                              | • OEHHA will include a compendium/binder option for providing the warnings.  
• However, in order to comply with the requirements of the statute, the binder option will require use of an on-product identifier or shelf-tag identifier. The general information sign and the binders are not sufficient to provide a clear and reasonable warning for individual products. |
| 3. Small retailers                                                   | • OEHHA will propose an alternative warning requirement for small food retailers (likely just posting of the informational sign with the web address).  
• Will apply to retailers with less than a certain total square footage of food items.  
• This is because of the likelihood of “saturation” coverage for warnings through mid-to-large food retailers and will help avoid significant compliance costs for small retailers. This is another basis for creating the program as a “pilot” |
### 4. OEHHA shouldn’t require name/CAS Number for chemicals in the foods

- Food is different from other products.
- Food warnings need to be presented differently.
- One of our main purposes for this regulation is to provide more meaningful/useful information to consumers.
- Making available on our website the names and CAS numbers of listed chemicals known to be in the foods that require a warning is essential to this purpose.
- We will clarify that mfg’s need only identify “known” chemicals in the foods that are likely present at levels requiring a warning (not all trace chemicals in the foods require a warning).
- We will clarify that new or additional testing of products for Prop 65 chemicals is not required in order to comply with this regulation.
- Individual chemicals do not have to be included on the in-store warning. (Not a change from existing safe-harbor).
- To provide more meaningful information to interested consumers, all known listed chemicals in a product that require a warning must be identified by the manufacturer on OEHHA’s web site.

### 5. Put back in the proposed language from the Mfg/Retailer Proposal

- We will be including language concerning retailer cooking or processing foods.
- Timelines for completing tasks may be increased.

### 6. Fresh fish

- Foods subject to existing court judgments or settlements other than fresh fish are included in the program.
- AG has determined that safe harbor is insufficient for fresh fish.

### 7. Change “provide” to “make available”

- “Provide” is consistent with the language in the statute, regulations and case law.

### 8. Opportunity to cure

- OEHHA is open to this suggestion, but it should be considered as a separate regulatory project.
- We have concerns that it may be beyond our authority.

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OEHHA/FKammerer-CJMC 12/3/09